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Congress of the United States  
House of Representatives  
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CO-CHAIR, DEMOCRATIC POLICY AND  
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EUROPE, EURASIA, AND EMERGING THREATS

SUBCOMMITTEE ON MIDDLE EAST  
AND NORTH AFRICA

November 1, 2017

The Honorable Jeffrey Sessions  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Dear Attorney General Sessions and Chairman Pai:

I write to express my strong concerns with Sinclair Broadcast Group's proposed acquisition of Tribune Media. This unprecedented merger threatens to raise prices for millions of working American families through higher cable bills, result in layoffs in newsrooms and stations across the country, and undermine the freedom and diversity of the press. I urge you to give full and fair consideration to my concerns by closely scrutinizing this merger to ensure that it will not harm consumers, workers, or the cornerstone of our democracy: a free and diverse press.

The proposed Sinclair-Tribune merger would combine two significant television broadcasters into the single largest broadcaster in the country.<sup>1</sup> As a result of the merger, Sinclair would reach 72% of American households through its control of 223 television stations in 108 markets, including 78% of the nation's top markets. Furthermore, Sinclair would eliminate a direct competitor in a dozen local markets.<sup>2</sup> Sinclair's own President and Chief Executive Officer, Christopher S. Ripley, has said that the transaction would create "the largest broadcast group by a country mile"<sup>3</sup> and that the "industry needs to consolidate to two or three large broadcasters, and really just one to two strong local players in each market."<sup>4</sup> This market has already experienced a wave of consolidation over the past decade, resulting in significant, durable

<sup>1</sup> Joe Flint and Austen Hufford, *Sinclair Broadcast to Buy Tribune Media for \$3.9 Billion*, WALL. ST. J. (May 8, 2017), <https://www.wsj.com/articles/sinclair-broadcast-to-buy-tribune-media-for-3-9-billion-1494250624>.

<sup>2</sup> Petition to Deny of Free Press, *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 5 (filed Aug. 7, 2017), <https://ecfsapi.fcc.gov/file/1080886409552/Sinclair-Tribune%20Petition%20to%20Deny.pdf>.

<sup>3</sup> Joe Flint and Austen Hufford, *Sinclair Broadcast to Buy Tribune Media for \$3.9 Billion*, WALL. ST. J. (May 8, 2017), <https://www.wsj.com/articles/sinclair-broadcast-to-buy-tribune-media-for-3-9-billion-1494250624>.

<sup>4</sup> *Sinclair Broadcast Group (SBGI) Q2 2017 Results - Earnings Call Transcript*, SEEKING ALPHA (Aug. 2, 2017), <https://seekingalpha.com/article/4093745-sinclair-broadcast-group-sbgi-q2-2017-results-earnings-call-transcript>.

barriers to entry for competitors and fee inflation that is “unsupported by a rational explanation.”<sup>5</sup>

Allowing this proposed merger will predictably lead to higher cable bills for American consumers for worse content and service.<sup>6</sup> Television broadcasters compete to provide programming, including local news, to attract a large audience to earn advertising revenue.<sup>7</sup> As the Justice Department noted in 2013, the combination of size, loyalty, and reach enables television broadcasters to extract high retransmission fees.<sup>8</sup> This is precisely because advertisers “covet” these spots since “they have the largest audience and can reach all the television viewers in an area.”<sup>9</sup> As a result of this transaction, Sinclair will have increased bargaining power to demand excessive retransmission rates.<sup>10</sup> Invariably, these price increases would be passed onto consumers in the form of higher cable bills and diminished quality of content and service.<sup>11</sup> As one programming distributor concluded, this merger “should not, and cannot, be approved” unless the merging parties can either show that prices will not increase as a result of this transaction “or explain why consumers deserve to pay more for inferior content.”<sup>12</sup>

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<sup>5</sup> Petition to Deny of DISH Network, L.L.C., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 35–36 (filed Aug. 7, 2017), [https://dishnetwork.newshq.businesswire.com/sites/dishnetwork.newshq.businesswire.com/files/doc\\_library/file/DISH\\_Petition\\_to\\_Deny\\_Sinclair-Tribune\\_Merger.pdf](https://dishnetwork.newshq.businesswire.com/sites/dishnetwork.newshq.businesswire.com/files/doc_library/file/DISH_Petition_to_Deny_Sinclair-Tribune_Merger.pdf).

<sup>6</sup> Petition to Deny of Cinemoui et al., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 7 (filed Aug. 7, 2017), <https://ecfsapi.fcc.gov/file/1080813301014/Independent%20Programmer%20Comments%20on%20Sinclair-Tribune%20Merger.pdf>.

<sup>7</sup> Ex Parte Submission of the U.S. Dep’t of Justice, *In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, at 5 (filed Feb. 20, 2013), <https://www.justice.gov/sites/default/files/atr/legacy/2014/02/24/303880.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Petition to Deny of DISH Network, L.L.C., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 16 (filed Aug. 7, 2017).

<sup>11</sup> *See, e.g.*, Petition to Deny of Free Press, *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 3 (filed Aug. 7, 2017) (“Diverse programmers would risk being priced out of the market as Sinclair leverages its scale for exorbitant retransmission consent fees, for which pay-TV subscribers will invariably pay the bill.”).

<sup>12</sup> Petition to Deny of DISH Network, L.L.C., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 13 (filed Aug. 7, 2017).

The proposed merger also threatens the economic security of hardworking Americans. Sinclair has a long and entrenched track record of “slashing budgets and downsizing newsrooms,”<sup>13</sup> resulting in “high turnover, low morale, and even instances of bullying.”<sup>14</sup> Professor Dow Smith, a former NBC news director in Detroit, stated in 2004 that if “I were a Sinclair news director I’d quit.”<sup>15</sup> Since then, this anti-worker atmosphere has not improved. For example, a sales assistant at a local broadcast station who was laid off after it was acquired by Sinclair described the station as “very hostile” because of Sinclair’s management style:

When Sinclair came in and bought our company, things just continued to grow worse. Our best managers either left or were laid off. High turnover rate with little to no replacement — more added work and less flexibility to schedule time-off. The work environment is very hostile. Managers tend to play favorites and company morale is at an all-time low. Workplace bullying is also common but it tends to be more passive-aggressive so executives can get away with it.<sup>16</sup>

Sinclair is also known for creating “efficiencies” through broadcast sharing agreements,<sup>17</sup> which as the Communications Workers of America has noted, “lead to significant job loss” and “result in fewer stations producing news, less time devoted to local news, and also fewer broadcast station employees and journalists.”<sup>18</sup> This form of outsized power over wages and workers is referred to as “monopsony” power and violates the antitrust laws. As the White House Council of Economic Advisers noted last year, monopsony power “in the labor market can reduce wages,

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<sup>13</sup> Petition to Deny of Cinemai et al., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 11 (filed Aug. 7, 2017).

<sup>14</sup> Reply Comments of the Computer & Communications Industry Association (CCIA), *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 11 (filed Aug. 29, 2017), <https://ecfsapi.fcc.gov/file/108291865128400/17-179%20CCIA%20Reply%20Comments.pdf>.

<sup>15</sup> Eric Boehlert, *Sinclair’s disgrace*, SALON (Oct. 14, 2004), [https://www.salon.com/2004/10/14/sinclair\\_4/](https://www.salon.com/2004/10/14/sinclair_4/).

<sup>16</sup> Richard Prince, *Sinclair Group Ousting Longtime TV Anchor Maureen Bunyan*, JOURNAL-ISMS (Jan. 9, 2017), <https://journalisms.theroot.com/sinclair-group-ousting-longtime-tv-anchor-maureen-bunya-1791134110>.

<sup>17</sup> Petition to Deny of Cinemai et al., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 4 (filed Aug. 7, 2017).

<sup>18</sup> *Id.*

employment, and overall welfare.”<sup>19</sup> The antitrust laws were clearly intended to prevent this form of market power through mergers.<sup>20</sup>

Allowing single company to serve as the gatekeeper of broadcast television for the majority of American households in an already concentrated market is likely also presumptively anticompetitive under the antitrust laws.<sup>21</sup> It is well established that a merger that will significantly increase concentration in a market that is already concentrated is presumptively anticompetitive.<sup>22</sup> In a landmark case, the Supreme Court held in 1963 in *Philadelphia National Bank* that a merger that causes a single company to control an undue share of the market while significantly increasing the concentration of firms in that market is “so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.”<sup>23</sup> Since then, lower courts have continued to apply this standard, noting that significant concentration “creates, by a wide margin, a presumption that the merger will lessen competition.”<sup>24</sup>

The Justice Department’s horizontal merger guidelines similarly state that mergers that significantly “increase concentration and result in highly concentrated markets are presumed to be likely to enhance market power.”<sup>25</sup> This presumption against anticompetitive mergers in concentrated markets is consistent with the economic literature, which suggests that concentration is correlated with higher prices.<sup>26</sup> Renata Hesse, the former Acting Assistant Attorney General Renata Hesse of the Justice Department’s Antitrust Division, observed last year that “we are learning more and more that mergers among substantial competitors tend to lead to higher prices.” Because these large mergers “often fail to deliver on the gains their proponents sought to achieve . . . we should be skeptical of the claim that mergers among

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<sup>19</sup> COUNCIL OF ECONOMIC ADVISERS, ISSUE BRIEF: LABOR MARKET MONOPSONY: TRENDS, CONSEQUENCES, AND PUBLIC RESPONSES 1 (2016), [https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025\\_monopsony\\_labor\\_mrkt\\_cea.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

<sup>20</sup> Renata Hess, Acting Assistant Attorney General, Antitrust Division, Dep’t of Justice, And Never the Twain Shall Meet? Connecting Popular and Professional Visions for Antitrust Enforcement, Opening Remarks at 2016 Global Antitrust Enforcement Symposium (Sept. 23, 2016) (“[A] merger that gives a company the power to depress wages or salaries or to reduce the prices it pays for inputs is illegal whether or not it also gives that company the power to increase prices downstream.”), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-renata-hesse-antitrust-division-delivers-remarks>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (“One bedrock tool for protecting against anticompetitive mergers has been recognized by the Supreme Court for over fifty years.”).

<sup>23</sup> 15 U.S.C. § 18; *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 363 (1963).

<sup>24</sup> *See, e.g., FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001).

<sup>25</sup> U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES 1 (2010), <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

<sup>26</sup> Steven C. Salop, *The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach*, 80 ANTITRUST L.J. 269, 277 (2015).

substantial competitors are beneficial.”<sup>27</sup> Of course, merging parties may rebut this presumption by clearly demonstrating that the merger will not harm competition.<sup>28</sup> But to date, Sinclair has not demonstrated that acquiring Tribune will not harm competition, as several public interest and labor organizations argue.<sup>29</sup>

The transaction also threatens to frustrate the legislative intent prohibiting mergers that may substantially lessen competition under the Clayton Act.<sup>30</sup> Congress established this standard response to “a fear of what was considered to be a rising tide of economic concentration in the American economy.”<sup>31</sup> This concern was bolstered by “evidence of the danger to the American economy in unchecked corporate expansions through mergers,”<sup>32</sup> as well as the effects of concentration on other democratic values.<sup>33</sup>

The proposed merger is almost certainly not in the public interest. The Communications Act directs the Federal Communications Commission to deny license transfers for any communication transaction that is not in the public interest,<sup>34</sup> while Congress has long admonished the Commission to protect against broadcast mergers that would harm competition, diversity, and localism.<sup>35</sup> Allowing a single broadcaster to reach 72% of American households while eliminating direct competition in local markets, as this unprecedented merger would do, the Commission must find that the proposed merger “would enhance, rather than merely preserve, existing competition.”<sup>36</sup>

The effects of this concentration will be harmful for local communities and, in particular, communities of color.<sup>37</sup> The majority of Americans get their news from local television

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<sup>27</sup> Renata Hess, Acting Assistant Attorney General, Antitrust Division, Dep’t of Justice, *And Never the Twain Shall Meet? Connecting Popular and Professional Visions for Antitrust Enforcement*, Opening Remarks at 2016 Global Antitrust Enforcement Symposium (Sept. 23, 2016).

<sup>29</sup> See, e.g., *Petition to Deny of Free Press, In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (filed Aug. 7, 2017), <https://ecfsapi.fcc.gov/file/1080886409552/Sinclair-Tribune%20Petition%20to%20Deny.pdf>.

<sup>30</sup> 15 U.S.C. § 18 (2017).

<sup>31</sup> *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 363 (1963).

<sup>32</sup> *Brown Shoe Co. v. United States*, 370 U.S. 294, 315 (1962); Robert Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051 (1979); Derek C. Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics*, 74 HARV. L. REV. 226, 233 (1960).

<sup>33</sup> *Id.*

<sup>34</sup> 47 U.S.C. § 310(d); 47 U.S.C. § 521(4); 47 U.S.C. § 532(a).

<sup>35</sup> *Comcast/NBCU Order*, 26 FCC Rcd. at 4249-50, ¶253.

<sup>36</sup> *Charter/TWC Order*, 31 FCC Rcd. at 6338 ¶ 29.

<sup>37</sup> *Petition to Deny of Free Press, In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 20 (filed Aug. 7, 2017).

newscasts, while a large share of viewers rely on local broadcast television.<sup>38</sup> Communities of color and low-income households rely heavily on local news. Free Press, an independent public-interest group, notes that this dynamic “means that any negative consequences of changes in the broadcast television market will likely disproportionately harm communities of color and low-income families who more often depend on broadcast for news and information.”<sup>39</sup>

Worse still, a single gatekeeper of local news and programming is a threat to the free and diverse press. There is bipartisan agreement that this merger threatens to cripple a “free and diverse press, a bedrock principle of American democracy.”<sup>40</sup> Local stations acquired by Sinclair frequently complain that Sinclair’s programming, including “must-run” segments, “are too politically tilted and occasionally of poor quality.”<sup>41</sup> In Providence, Rhode Island, these segments “have rattled viewers and [the station’s] own news reporters” on Rhode Island’s “most watched television station.”<sup>42</sup>

Conservative media groups have also raised concerns that the transaction “will homogenize the content available to U.S. consumers, eliminate unique viewpoints and reduce press diversity, especially in the delivery of local news.”<sup>43</sup> The Blaze, a conservative outlet founded by Glenn Beck, commented that “[r]egardless of political affiliation, we should agree that robust democracy demands a variety of viewpoints from a myriad of sources; yet, the wave of consolidation across the industry threatens this core value. And the Sinclair-Tribune merger would exacerbate this troubling trend.”<sup>44</sup>

In sum, the proposed Sinclair-Tribune merger will likely raise prices and reduce economic opportunities for hardworking Americans, threaten the freedom and diversity of local reporting, and appears to presumptively violate the antitrust laws and the public interest. Accordingly, I respectfully request that this merger is closely scrutinized to ensure that will not harm competition, consumers, or workers.

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 21.

<sup>40</sup> Mark Swanson, Newsmax, *Conservative Media Oppose Sinclair Deal*, Newsmax (Aug. 9, 2017), <https://www.newsmax.com/Newsfront/conservative-media-sinclair-broadcast/2017/08/09/id/806726/>.

<sup>41</sup> Sydney Ember, *Sinclair Requires Stations, Including KOMO, to Air Segments Tilting to the Right*, SEATTLE TIMES (May 15, 2017), <http://www.seattletimes.com/seattle-news/sinclair-requirestv-stations-including-komo-to-air-segments-that-tilt-to-the-right/>.

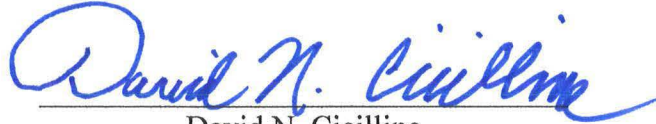
<sup>42</sup> Jacqueline Tempera, *WJAR forced to run pro-Trump programs*, PROVIDENCE JOURNAL (Sept. 16, 2017), <http://www.providencejournal.com/news/20170916/wjar-forced-to-run-pro-trump-programs>.

<sup>43</sup> Sydney Ember, *Sinclair Deal Draws Unlikely Opponent: Conservative News Media*, N.Y. TIMES (Aug. 8, 2017), [https://www.nytimes.com/2017/08/08/business/media/sinclair-bid-to-acquire-tribune-media-draws-opposition.html?\\_r=0&mtref=www.newsmax.com](https://www.nytimes.com/2017/08/08/business/media/sinclair-bid-to-acquire-tribune-media-draws-opposition.html?_r=0&mtref=www.newsmax.com).

<sup>44</sup> Petition to Deny of Cinemoi et al., *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179, at 2 (filed Aug. 7, 2017).



Sincerely,



David N. Cicilline

Ranking Member

Subcommittee on Regulatory Reform, Commercial and Antitrust Law  
Committee on the Judiciary

cc: The Honorable Bob Goodlatte, Chairman, the Committee on the Judiciary

The Honorable Tom Marino, Chairman, the Subcommittee on Regulatory Reform,  
Commercial and Antitrust Law of the Committee on the Judiciary

The Honorable Makan Delrahim, Assistant Attorney General, Antitrust Division,  
Department of Justice

The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission

The Honorable Brendan Carr, Commissioner, Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner, Federal Communications  
Commission



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

December 19, 2017

The Honorable David Cicilline  
U.S. House of Representatives  
2244 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Cicilline:

Thank you for your letter regarding Sinclair Broadcast Group's proposed acquisition of Tribune Media. I appreciate hearing your views, and your letter will be made part of the official record of the proceeding.

Consistent with our rules, the Commission will evaluate whether this proposed transaction is in the public interest. While I am unable to discuss the merits of this particular proceeding, I can assure you that the Commission is conducting an open and transparent process as required by FCC rules and regulations and that our decision will be based on a careful analysis of the robust record that has been developed.

Again, thank you for your interest in this matter.

Sincerely,

A handwritten signature in black ink, reading "Ajit V. Pai". The signature is stylized, with the first name "Ajit" written in a cursive script and the last name "Pai" in a more formal, upright script. The middle initial "V." is written in a simple, printed style between the first and last names.

Ajit V. Pai